

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 01.12.2020

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NO. 24642 of 2014
and
M.P. NO. 1 of 2014

V.Manikandan

... Petitioner

- Vs -

- 1.The Chairman -cum-Managing Director,
Tamilnadu Electricity Board Ltd.,
N.P.K.R.R. Maligai,
Old 800 New No.144, Anna Salai,
Chennai 600 002.
- 2.The Managing Director,
TANGEDCO Ltd,(Formerly Tamilnadu Electricity Board)
N.P.K.R.R. Maligai,
Old 800 New No.144, Anna Salai,
Chennai 600 002.
- 3.The Chief Engineer (Personnel)
TANGEDCO Ltd,(Formerly Tamilnadu Electricity Board)
N.P.K.R.R. Maligai,
Old 800 New No.144, Anna Salai,
Chennai 600 002.
- 4.The Additional Chief Engineer,
TANGEDCO Ltd,(Formerly Tamilnadu Electricity Board)
N.P.K.R.R. Maligai,
Old 800 New No.144, Anna Salai,
Chennai 600 002.
- 5.The Superintending Engineer,
Chengalpattu Electricity Distribution Circle,
TANGEDCO Ltd,(Formerly Tamilnadu Electricity Board)
Chengalpattu.

... Respondents

Writ petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of Certiorarified mandamus, to call for records pertaining to the impugned order in letter No.Ka.No.045046/243/g.10/101/2013-2 dated 21.09.2013

passed by the 4th respondent and quash the same and thereby direct the respondents herein to provide appointment to the petitioner on compassionate Grounds in any suitable post commensurate with his qualification, consequent on the death of his father on 24.08.1999 while in service of the respondent Board.

For Petitioner : Mr.A.R.Suresh

For Respondents: Mr.Dhilipkumar

ORDER

This Writ petition is filed by the petitioner, to call for records pertaining to the impugned order in letter No.Ka.No.045046/243/g.10/101/2013-2 dated 21.09.2013 passed by the 4th respondent and quash the same and thereby direct the respondents herein to provide appointment to the petitioner on compassionate Grounds in any suitable post commensurate with his qualification, consequent on the death of his father on 24.08.1999 while in service of the respondent Board.

2. The case of the petitioner is that the petitioner's father was an erstwhile employee of the Tamilnadu Electricity Board and while in service, he died in harness on 24.08.1999, leaving behind his mother with three minor children as his legal heirs. The petitioner states that subsequent to the death of his father, the petitioner's mother filed an application on 25.01.2001 seeking appointment on compassionate ground. However, after necessary inspection and verification, the claim of the petitioner's mother for compassionate appointment was rejected by 4th respondent vide order dated 01.08.2002, on account of the fact that she was not in possession of the requisite qualification for appointment, which order, according to the petitioner, was not served on his mother. Once again, the petitioner's mother made a request by submitting another application on 24.06.2008 to the 5th respondent. In the mean time the petitioner attained majority. It is the averment of the petitioner that while forwarding the application, the 5th respondent has specifically mentioned that the rejection order was not communicated to her in time and had it been communicated in time, she could have made some alternative arrangements to make application for her son. In spite of receipt of the said recommendation, the 3rd respondent has not passed any orders on the proposal submitted by the 5th respondent dated 07.07.2012. Hence the petitioner made a fresh representation to the 3rd respondent on 10.10.2012 through proper channel. Since the same was not considered, he filed writ petition before this Court in WP.No.34532 of 2012, and this Court, by order dated 03.06.2013, disposed of the writ petition with a direction to the 3rd

respondent therein to pass orders on the proposal dated 07.07.2012 within a period of 6 weeks regarding providing appointment on compassionate grounds. In compliance of the Court order dated 03.06.2013, the 4th respondent has passed an impugned rejection order on 21.09.2013, stating that he could not apply for appointment on compassionate grounds as his application is beyond the period of three years. Challenging the impugned rejection order passed by the 2nd respondent, the present petition has been filed with the above said prayer.

Learned counsel appearing for the petitioner submitted that though the initial application was made by the petitioner's mother well in time, which was rejected in the year 2006, however the said rejection, though has not been challenged, however, the said rejection is only on the ground that the petitioner's mother was not possession of the requisite qualification. It is the further submission of the learned counsel for the petitioner that the initial order of rejection was not communicated to the petitioner, which would also be evident from the communication as emanated from the 5th respondent to the 3rd respondent and, therefore, the lacunae on the part of the respondents should not be put in detriment to the petitioner. Further, as the petitioner was a minor at the relevant point of time, on attaining majority, he made a request, which was rejected, which is wholly unsustainable and, therefore, prays for a positive direction to the respondents.

3. Per contra, learned standing counsel appearing for the respondents, while denied non-service of the rejection order on the petitioner's mother, further submitted that the application of the petitioner being after a period of three years, which is the outer limit to consider the case for compassionate appointment, the 3rd respondent has rightly rejected the application of the petitioner and, therefore, no interference is warranted with the order passed by the respondent.

4. This Court bestowed its attention to the contentions advanced by the learned counsel on either side and also perused the materials available on record.

5. It is not in dispute that the mother of the petitioner filed application for compassionate appointment, which was rejected by the respondents on the ground that the petitioner's mother was not in possession of the requisite qualification at the relevant point of time. It is also not in dispute that the petitioner was a minor at that point of time. It is borne out by record, and not disputed by the petitioner that the rejection of the application of the petitioner's mother was not challenged, but only ground that is taken is that the said rejection order was not communicated to the petitioner's mother.

Though such a stand is taken, it is to be pointed out that no material to substantiate the said contention is placed before this Court. Further, it is also to be pointed out that in the second application submitted by the petitioner's mother, there is no whisper as to the status of the previous application filed by her. When the petitioner has not diligently pursued the previous application and had left it to cool by itself only to file another application after a period of five years, the said act of the petitioner stares writ large on her to come before this court and claim that the rejection order was not served on the petitioner's mother.

6. Be that as it may. In W.P. (MD) Nos.7016 of 2011, etc. Batch, vide order dated 11.3.2020, on a reference made by the learned single Judge of this Court relating to conflicting views in relation to compassionate appointment, the matter was placed before the Full Bench. The reference made to the Full Bench is as under :-

"Whether the view taken in A.Kamatchi's case holding that an application for compassionate appointment made even beyond three years of the death of the deceased needs consideration, is the correct law or the judgment of the Division Bench in N.Renugadevi's case, where a contradictory view has been taken, is the correct law?"

7. Tracing the lineage on the advent of compassionate appointment and the factors that are to be had in mind, while considering a case of compassionate appointment, the Full Bench sculpted the factors that needs to be taken into consideration while looking at a case relating to grant of compassionate appointment and for better understanding the same is extracted hereunder :-

(i) Compassionate employment cannot be made in the absence of rules or regulations issued by the Government or a public authority. The request is to be considered strictly in accordance with the governing scheme, and no discretion as such is left with any authority to make compassionate appointment dehors the scheme.

(ii) An application for compassionate employment must be preferred without undue delay and has to be considered within a reasonable period of time.

(iii) An appointment on compassionate ground is to meet the sudden crisis occurring in the family on account of the death or medical invalidation of the breadwinner while in service. Therefore, compassionate employment

cannot be granted as a matter of course by way of largesse irrespective of the financial condition of the deceased/incapacitated employee's family at the time of his death or incapacity, as the case may be.

(iv) Compassionate employment is permissible only to one of the dependents of the deceased/incapacitated employee viz. parents, spouse, son or daughter and not to all relatives, and such appointments should be only to the lowest category that is Class III and IV posts. (Refer Umesh Kumar Nagpal Vs. State of Haryana (1994) 4 SCC 138).

8. From the above, it is unambiguously clear that application for compassionate appointment should be made without undue delay and it should be considered strictly in accordance with the governing scheme and no discretion is vested with the authority and that the concept of compassionate appointment is only to meet the sudden crisis that has befallen the family on the death of the breadwinner.

9. From the above the main ingredient for considering a case for compassionate appointment is that it is only for the purpose of meeting the sudden crisis that has occurred due to the untimely death of the breadwinner. It is not that in all cases where the breadwinner breathes his last in harness, compassionate appointment, at any point of time, ought to be given as a matter of right.

10. The Full Bench, in the above said decision, after discussing the various Government Orders and also the laws propounded on the subject by the High Court as well as by the Hon'ble Apex Court, answered the reference in the following terms :-

"In view of the above, the reference is answered as under:-

a) Appointment on compassionate basis has to be strictly followed in accordance with the relevant G.O.'s or the scheme that has been framed by the employer. Any deviation from the scheme is not permissible.

b) In view of the above the judgment of the Division Bench in E.Ramasamy Vs. Tamil Nadu Electricity Board and the Secretary to Government Vs. Renugadevi, lays down the correct law and the judgment of the Division Bench dated 06.08.2013 in A.Kamatchi Vs. The Chairman, Tamil Nadu Electricity Board, which is contrary to the scheme framed by the Tamil Nadu Electricity

Board does not lay down the correct proposition.
Reference is answered accordingly.”

11.From the conceptual proposition of law laid down by the Full Bench, it is implicitly clear that the appointment on compassionate basis should be strictly be in accordance with the Government Orders/the Scheme framed for the said purpose by the employer.

12.The case of the petitioner does not fall within the scheme framed by the Electricity Board and it cannot be allowed to be stretched to suit the convenience of the petitioner herein and to give a benefit of employment to the petitioner, who was merely a kid of around two or three years of age on the date of death of his father and allowing the petitioner to make an application after a period of fifteen years on attaining the age of majority and giving the colour of compassionate appointment to bring him into service would defeat the very purpose for which compassionate appointment is provided. This was never an intention behind framing a scheme to provide appointment on compassionate basis. Further as per Board Proceeding No.46 and Board Proceeding No.17, does not permit filing of an application after three years on attaining majority and therefore, this Court does not find any illegality or infirmity on the impugned orders passed by the 2nd respondent.

13.The very concept of giving a compassionate appointment is to tide over the financial difficulties that are faced by the families of the deceased due to the death of the earning member of the family. There is immediate loss of earning for which the family suffers financial hardship. The benefit is given so that the family can tide over such financial constraints.

14.Appointments to public offices have to comply with the requirements of Articles 14 and 16 of the Constitution of India. Compassionate appointment is in the nature of an exception to the ordinary norm of allowing equality of opportunity to other eligible persons to compete for public employment. The reason for compassionate appointment, as envisaged under the scheme, and the relevant Government Orders, is the need of immediate necessity to avert the financial hardship that would be sustained by the bereaved family on the death of its breadwinner which is sought to be alleviated by providing immediate appointment.

15.A person in penury or distress will not take long to survive the vagaries of penury for seeking information of such benefits. If a dependent who sleeps over and does not make any effort by the reason of his own incapacity, which also includes the dependent-claimant not having attained the age of majority,

such lapse of time on the part of the claimant will definitely lead to dilute the immediacy of the requirement. The time spent to attain majority cannot be a ground to establish the existence of indigence even after attaining the age of majority. Holistically considering, the period of three years for moving an application for compassionate appointment is provided, which means that if the dependent is only about 15 years of age, he/she can apply immediately after attaining the age of majority. However, the lower the age of the dependent would not be an attributing factor to extend the period, as such elasticity would have no ends to meet.

16.As pointed out above, the intent and purpose for which the benevolent act is intended is to alleviate the poverty of the distressed family at the crucial hour and to provide it with financial stability. In the case on hand, the petitioner was aged around three years at the time of death of his father. Coming before this Court after a span of fifteen years and trying to earn an appointment on compassionate grounds is clearly not the intent and purpose behind the benevolent consideration for compassionate appointment. In such a backdrop, the plea of the petitioner to direct the respondents to provide the relief of compassionate appointment to the petitioner by issuing appropriate directions would be an exercise, beyond the scope and ambit of compassionate appointment and issuing such a direction would defeat the very purpose for which the said benevolence has been granted to deserving individuals.

17.For the reasons aforesaid, this Court is not inclined to interfere with the order passed by the respondents as no case has been made out by the petitioner to substantiate his grievance. Accordingly, this writ petition, being devoid of merits, is dismissed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

jrs

To

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Tamilnadu Electricity Board Ltd.,
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Chengalpattu.

+1cc to Mr.P.R.Dhilip Kumar, Advocate Sr.38458

+1cc to Mr.A.R.Suresh, Advocate Sr.38573

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W.P. NO. 24642 OF 2014

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